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The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia: an introduction

Jo Shaw and Igor Štiks

Working Paper 2010/01



European Research Council



University of Edinburgh, School of Law
The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia
(CITSEE)

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The Europeanisation of Citizenship in the Successor States of the Former Yugoslavia: an introduction

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Abstract

This paper presents the basic framework of the CITSEE project (the Europeanisation of Citizenship in the Successor States of the Former Yugoslavia). It covers the basic objectives, approach and methodology of the study, which develops an approach to studying citizenship through so-called 'constitutional ethnography'. The paper explains some basic terminological definitions used in the project, and reviews the key areas where CITSEE is expected to contribute to intellectual debate and theoretical understandings.

Keywords:

Citizenship; Western Balkans; Yugoslavia; European Union; EU citizenship; constitutional ethnography; research methods; Europeanisation; enlargement.

1. Introduction

The purpose of this paper is to present the basic framework for a research project on the Europeanisation of Citizenship in the Successor States in the Former Yugoslavia (CITSEE).² It sets out the main objectives, approach and lines of thinking which animate the research taking place within the framework of CITSEE and its purpose is to act as a scoping paper, which will assist in benchmarking subsequent progress through the programme of work. The text has been drawn up on the basis of the original research proposal approved by the European Research Council and should be read in that spirit, rather than as a conventional academic paper. Inevitably, many issues are covered rather briefly and consequently this paper should not be taken as stating definitively the final scope and coverage of the research undertaken within CITSEE. The text was finalised in January 2010 and in some respects it will inevitably become outdated as the project progresses, given the speed of change in the states which are now to be found on the territory of the former Yugoslavia.

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² CITSEE is a project funded by the European Research Council under its Advanced Investigator Scheme (ERC 230239) from 2009 until 2014. Further details of the project are to be found on its website: <http://law.ed.ac.uk/citsee>.

2. Objectives and general approach

Overview and background

While a great deal of attention has been paid to many of the legal and political consequences of the dissolution of the former Yugoslavia (Socialist Federal Republic of Yugoslavia or 'SFRY'³), as yet no mature and comprehensive study has been undertaken of the nationality and broader citizenship issues which have been generated by the creation between 1991 and 2008 of seven new (or reconstituted) independent states located on its territory, which places these developments in their broader transnational, international and European context.

The work of Václav Mikulka for the International Law Commission concentrated on the consequences flowing from the succession of states for the status of individuals under nationality law, and in particular the strengthening of international law in relation to statelessness.⁴ Jelena Pejić also focused on international law, assessing the national solutions chosen by successor states by reference to the international legal norm which requires states to endeavour to ensure that persons do not become stateless.⁵ In both cases, these works of doctrinal international law scholarship were accomplished in the 1990s, and thus predate subsequent fragmentation processes in the region creating new states (Montenegro, Serbia, Kosovo...), which have generated further questions for state succession, the initial determination of the citizenry where there was no pre-existing Yugoslav republic (Kosovo) and the creation of new citizenship regimes. Other political and legal analyses of the relevant legal materials are also either outdated or somewhat narrow in approach. The analyses reassembled by Dika *et al* in the *Croatian Critical Law Review* were presented at a conference in early 1997 and published in 1998, and require urgent updating and re-contextualising in the light of subsequent events.⁶ Materials prepared under the editorship of Shpend Imeri, although more recent, are somewhat fragmentary and descriptive in nature, and – other than principles of the rule of law – lack a set of central organising principles which could underpin an effective comparison between the several national reports.⁷ From a more general perspective of political transition,

³ Issues of terminology are dealt with extensively in Section 8 below.

⁴ Links to the various reports prepared by Mikulka on behalf of the International Law Commission as well as the subsequent UN General Assembly Resolutions can be found at: http://untreaty.un.org/ilc/guide/3_4.htm.

⁵ Country Report, 'Citizenship and Statelessness in the former Yugoslavia: the legal framework', (1995) 14 *Refugee Survey Quarterly* 1-18 (also published as J. Pejić, 'Citizenship and Statelessness in the Former Yugoslavia: The Legal Framework', in O'Leary, Síofra, and Teijja Tiilikainen, (eds.) *Citizenship and nationality status in the New Europe*. London, The Institute for Public Policy Research, 1998, 169-186.

⁶ M. Dika, A. Helton and J. Omejec (eds.), *The Citizenship Status of Citizens of the Former SFR Yugoslavia after its Dissolution*, (1998) *Croatian Critical Law Review*, Vol. 3, Nos. 1-2.

⁷ S. Imeri (ed.), *Rule of Law in the Countries of the Former SFR Yugoslavia and Albania: Between Theory and practice*, Gostivar, Association for Democratic Initiatives, 2006.

the important paper by Katherine Verdery⁸ addresses the challenges posed by ideas such as transnationalism taking into account in particular the relationship between citizenship and property, voting rights and welfare entitlements. Again, however, the paper dates from the mid 1990s and, while the paper focuses – for its main example – upon the dissolution of Yugoslavia, it has a wider purpose and range.

The more recent study by Igor Štiks⁹ provided an overview of relevant citizenship laws in the former Yugoslavia, taking into account both developments in a wider European context and also the influence of the distinct but ambiguous pre-existing ‘Republican’ citizenships of the constituent SFRY Republics up to 1991 on subsequent legal developments.¹⁰ A number of works look at the wider framework of post 1989 Europe. The collective work *Citizenship Policies in the New Europe*,¹¹ contains chapters by Francesco Ragazzi and Igor Štiks and by Felicita Medved, on Croatia and Slovenia respectively. The scope of the work, including comparative chapters by André Liebich and Wiebke Sievers, puts the detail of the citizenship laws and policies of post-Yugoslav states such as Croatia and Slovenia in the broader context of other post-partition states (e.g. Czech and Slovak Republics) and of central and eastern European post-transition states more generally.¹² Even so, as the volume concentrates on the new post-2004 and post-2007 EU Member States and the candidate states which have already started negotiations, this necessarily leaves out of account most of the former SFRY successor states, which have not reached that stage of ‘integration’ with the EU as yet, even though they have been offered a European perspective and the prospect of eventual membership by the EU. Marc Howard makes extensive use of this work in a chapter on the post-2004 Member States in his new work on comparative citizenship.¹³ Finally, the post-Soviet space and citizenship in new states in that context is the subject in a recent paper by Oxana Shevel in *Comparative Politics* which has obvious resonance for new states in the post-Yugoslavia constellation, especially a state such as Kosovo, which did not previously

⁸ K. Verdery, ‘Transnationalism, Nationalism, Citizenship and Property: Eastern Europe since 1989’, (1998) 25 *American Ethnologist* 291-306.

⁹ I. Štiks, ‘Nationality and Citizenship in the Former Yugoslavia: From Disintegration to European Integration’, (2006) 6 *Southeast European and Black Sea Studies* 483-500.

¹⁰ Other more recent work by Štiks includes: I. Štiks, *A Laboratory of Citizenship: Nations and Citizenship in the Former Yugoslavia and its Successor States*, PhD Dissertation, Northwestern University (June 2009)/Sciences Po, Paris (March 2009); I. Štiks, ‘“Old habits die hard”: The Europeanisation of the Citizenship Policies in New Balkan States’, paper presented at the Conference on *EU Enlargement and Institutional Reforms in Southeast Europe*, Freie Universität Berlin, July 2009.

¹¹ R. Bauböck, B. Perchinig and W. Sievers (eds.), *Citizenship Policies in the New Europe*, Amsterdam, Amsterdam University Press, 2009 (2nd Edition).

¹² F. Ragazzi and I. Štiks, ‘Croatian citizenship: from ethnic engineering to inclusiveness’, in Bauböck *et al* (eds.), above n.11, pp339-363; F. Medved, ‘From civic to ethnic community? The evolution of Slovenian citizenship’, in Bauböck *et al* (eds.), above n.11, pp305-338.

¹³ M. Howard, *The Politics of Citizenship in Europe*, Cambridge, Cambridge University Press, 2009.

have a regime of republican citizenship on the basis of which it could identify its citizenry post independence.¹⁴

Objectives and scope

The principal objective of CITSEE is thus to fill the gap left by such studies through a large scale critical and comparative study which not only focuses on the evolution of the national citizenship regimes created in each of the seven new Balkan states, but which also looks at the transnational and international dimensions of legal and institutional change in and across these regimes in a broader European context. CITSEE thus focuses on the development of a plurality of distinct citizenship and nationality laws, where previously there was a single 'national' regime, combining the federal and the Republican levels. It also studies in detail a number of key dimensions which are central to the constitution of the citizen, on a cross-cutting, trans-national basis:

- the status of residents of the former SFRY Republics resident in other republics at the moment of independence;
- the complex and multilevel nature of citizenship in the former SFRY, including issues of dual and plural nationality, as well as diaspora and kin-state policies;
- the interface between citizenship, political rights and political participation including the role of political parties in the context of ethnic approaches to democracy;
- the status of minority groups, such as the Roma, as well as personal status issues around gender, sexuality and trans-national families;
- the impact of citizenship concepts on free movement and travel across borders, with an initial focus on the relationship between processes of visa liberalisation and issues of citizenship definition.

All of these issues are placed in the context of the evolving processes of 'Europeanisation' occurring in 'Western Balkans' region. In this context, Europeanisation is broadly defined as 'domestic adaptation to European regional integration'.¹⁵ These processes of European regional integration include the effects of previous and prospective enlargements of the European Union (EU), the stabilisation and association processes which have preceded and structured accession and pre-accession negotiations for the Western Balkan states, and most recently the emergence of the Regional Cooperation Council for South Eastern Europe¹⁶ which

¹⁴ O. Shevel, 'The Politics of Citizenship Policy in New States', (2009) 41 *Comparative Politics*: 273-291; this builds on the groundbreaking early work of Rogers Brubaker: R Brubaker, 'Citizenship Struggles in Soviet Successor States', (1992) 26 *International Migration Review* 269.

¹⁵ M. Vink and P. Graziano, 'Challenges of a New Research Agenda', in P. Graziano and M. Vink (eds.), *Europeanization: New Research Agendas*, Basingstoke, Palgrave, 2007, 3-20 at 7.

¹⁶ See <http://www.rcc.int/>.

has replaced the Stability Pact¹⁷ from March 2008 onwards.¹⁸ Moreover, the effects of regional integration are not felt only directly in relation to EU law itself, but also through the medium of the normative systems of bodies such as the Council of Europe, the OSCE, the UN, and NATO. Studying Europeanisation does not assume that 'Europe' is simply a cause of change with states (whether Member States or not), and that the task of the researcher is simply to engage in top-down enquiry by looking at the domestic level and see what effects, in any given policy field (here that of domestic policy-making on citizenship issues) 'Europe' has had. Indeed, a bottom-up enquiry into the exogenous forces shaping citizenship laws and policies also falls within the wider frame of understanding Europeanisation.¹⁹

The broader aim of CITSEE is thus to contribute a substantial case study of the transformation of the nature of citizenship in contemporary Europe. While CITSEE focuses on a *sui generis* case of dis-integration and re-integration, involving a number of deeply divided societies, complex transnational legal and political arrangements, and unstable political institutions, at the same time it seeks to transcend the specific experience of the former SFRY and to offer deeper insights into the modern condition of citizenship in the wider Europe. Citizenship is a core (and contested) building block of both national and transnational modern polities and it has a complex relationship to the notion of constitutionalism. The citizens are not only the constituent power, transmitting this power through elections and other acts of political self-determination and also through the power to determine the boundaries of citizenship (rules of citizenship acquisition), but they also are the subjects of constituted power, defined under the constitution. Historical assumptions about settled patterns of national citizenship in national polities which barely overlap in terms of membership and political powers have increasingly been disrupted by developments *above* the state, such as the European Union, which has developed its own albeit limited notion of citizenship, and *below* the state, where secessionist movements and developments in regional and federal governance have challenged received notions of political membership. In developing this case study, this project echoes and further refines the approach adopted in an earlier study conducted by Jo Shaw which focused on the electoral rights of non-nationals under both EU and national law in the Member States of the EU, which itself sought to contribute to a better understanding of concepts of citizenship and political membership in contemporary Europe.²⁰

¹⁷ See <http://www.stabilitypact.org/>.

¹⁸ 'Zagreb Summit – recent achievements in regional cooperation and concrete measures to make the EU perspective tangible for the citizens of the Western Balkans', MEMO 07/169, 8 May 2007.

¹⁹ See also G. Noutcheva, 'Fake, partial and imposed compliance: the limits of the EU's normative power in the Western Balkans', (2009) 16 *Journal of European Public Policy* 1065, 1066.

²⁰ J. Shaw, *The Transformation of Citizenship in the European Union. Electoral Rights and the Restructuring of European Political Space*, Cambridge, Cambridge University Press, 2007.

The concept of 'citizenship regime'

CITSEE makes use of a concept of the 'citizenship regime'. This is a term adapted from gender studies where scholars use the term 'gender regimes' in order to refer to the range of institutionalised practices relating to how gender issues are regulated in a given society, acknowledging that these differ from state to state.²¹ In the citizenship context, therefore, the concept encompasses a range of different legal statuses, viewed in their wider political context, which are central to the exercise of civil rights, political membership and – in many cases – full socio-economic membership in a particular territory. Specifically, this includes 'nationality' in the sense of the internally and externally recognised link between the citizen and the state,²² and thus the body of law which sustains this link such as rules and processes governing acquisition and loss, as well as key themes such as toleration or rejection of dual or multiple nationality, the treatment of *de jure* and *de facto* statelessness, and the rules which govern effective access to a given citizenship status, such as requirements of civic registration. The latter are often important issues in regions which have seen violent conflict, war and forced population movements, especially in the case of socially, politically and legally marginal groups such as the Roma who are the most vulnerable to the long term exclusionary effects of forced population movements. However, other groups of internally displaced persons also find it difficult to resolve their citizenship status after conflicts. 'Citizenship' in this sense includes persons who are both resident on the territory and non-resident, and special attention must be paid to the extent to which citizenship is granted to non-residents.

Where applicable, the concept of citizenship regime must also include the status and rights attaching to citizenship of the European Union, as well as the effects of EU law, such as rules on visa liberalisation or facilitated entry mechanisms (e.g. for students or those seeking family reunification), giving due recognition, of course, the important differences in character which exist between Union citizenship and national citizenship.

It also includes certain statuses of internal 'quasi-citizenship' for non-national residents where these extend to electoral rights and related political rights which are normally restricted to national citizens alone, and of external 'quasi-citizenship' for non-nationals residing outside the territory of the state, who receive special benefits as former nationals (or their descendants) or ethnic kin groups related to the protector state.

²¹ See, for example, the use of the term by S. Walby, 'The European Union and Gender Equality: Emergent Varieties of Gender Regime', (2004) 11 *Social Politics* 4-29.

²² This is, of course, a technical use of the term 'nationality', which is quite different to the way that 'nationality' is often used in South-Slavic languages (e.g. *nacionalnost* or sometimes *narodnost*) to denote an ethnic conception of 'national' identity.

More generally, a citizenship regime could be said to encompass certain key individual and collective rights protected by national and international human rights law, such as minority rights and non-discrimination rights which profoundly impact upon the exercise of full civic membership within a society and a polity, in particular the right to non-discrimination on grounds of race or ethnic origin, gender and religious affiliation. This is the case even where the exercise of these rights is not strictly limited by reference to citizenship status or where the source of the norm being invoked for protection is not to be found in the national constitution or legislation, but in international law.

In sum, CITSEE privileges the investigation of the specifics of institutional change over normative issues or ideological questions. It largely leaves aside issues of identity-formation, except insofar as these take on a specific institutional form, or affect directly the contestedness of such institutional forms. If a reasonable working definition of citizenship encompasses dimensions of 'rights, access and belonging',²³ then this study focuses primarily on the first two elements, at the expense of the latter. It accepts that the historically dominant concept of 'national citizenship' has come under particular challenge from supranational developments such as EU citizenship as well as changes occurring within and across the boundaries of states, such as increased toleration of dual and plural nationality,²⁴ the tendency to allocate political and welfare rights to non-nationals under the heading of 'integration', and the legal treatment of transnational minorities. Thus CITSEE looks at one dimension of the de-fusing and re-fusing of the nationality and citizenship elements by studying the interplay between the EU and the state levels in particular, whilst taking into account other transnational and subnational developments which impact upon citizenship status and rights.

CITSEE also focuses heavily upon the acquisition and loss of the status of 'citizen', but includes a number of key questions and practices which arise directly as a result of the attribution of citizenship status, especially political rights, certain social rights especially for minority groups, property questions and mobility/travel rights (e.g visa liberalisation with the EU). These are the types of issues where an intuition could be established that the rights and practices themselves, or the underlying citizenship status and its attribution or denial, may have been manipulated in order to attain a wider political goal, such as securing closer integration with the European Union as well as securing political power internally within and between states.

So far as concerns the wider European context, the research works with a constructed concept of multilevel 'European' citizenship, combining the different legal statuses

²³ E.g. A. Wiener, *'European' Citizenship Practice. Building Institutions of a Non-State*, Boulder, Col., Westview Press, 1998.

²⁴ I. Culic, 'Dual Citizenship in Central and Eastern Europe' Working Papers in Romanian Minority Studies, Nr. 15, Cluj-Napoca, 2009.

and rights identified in the composite definition of citizenship given here, and explores the extent to which each of these elements are mutually constitutive.²⁵ Besson and Utzinger explain the evolution of a composite 'European' citizenship in an interesting way. They argue that changes have not occurred

'by supplanting national citizenships and replacing them with an overarching supranational citizenship of the Union... Rather, citizenship remains strongly anchored at the national level in Europe albeit in a different way. The change is both quantitative and qualitative. First, citizenship in Europe has become multi-levelled as European citizens are members of different polities both horizontally across Europe (other Member States) and vertically (European transnational, international and supranational institutions). Second, national citizenship in and of itself has changed in quality and has been made more inclusive in its scope and mode of functioning. Union citizenship adds a European dimension to each national *demos* and, to a certain extent, alters national citizenship in reconceiving it in a complementary relation to other Member States' citizenships.'

To this analysis, must be added the external dimension, for it is important to emphasise that the effects of EU citizenship do not stop precisely at the outer borders of the EU, not least because of the variable rules on citizenship acquisition which the Member States have in place. These affect different groups of third country nationals unequally.²⁶ Nor are these effects experienced equally within the EU. For example, nationals of post-2004 and post-2007 Member States from Central and Eastern Europe are subject to a transitional regime in relation to the effects of the provisions on the free movement of labour which restrict their rights as EU citizens.

3. The need for a contextual approach – from the legal perspective

The type of study envisaged cannot be accomplished using solely the traditional doctrinal methods of legal research. A project which restricted itself to the internal legal analysis²⁷ of the relevant national, transnational, European and international legal sources on citizenship regimes would be very limited in the insights it could offer. It would tend to present the law as if it were somehow hermetically sealed from the wider political and social context in which law and legal institutions operate. As part of a more general contextual and interdisciplinary turn in the field of

²⁵ S. Besson and A. Utzinger, 'Towards European Citizenship', (2008) *The Journal of Social Philosophy* 185-208; G. Delanty, 'European Citizenship: A Critical Reassessment', (2007) 11 *Citizenship Studies* 63; N. Walker, 'Denizenship and Deterritorialization in the EU', EUI Working Paper, Law 2008/08.

²⁶ E. Rigo, 'Citizenship at Europe's Borders: Some Reflections on the Post-colonial Condition of Europe in the Context of EU Enlargement', (2005) 9 *Citizenship Studies* 3-22.

²⁷ D. Feldman, 'The Nature of Legal Scholarship', (1989) 52 *Modern Law Review* 498-517.

legal research,²⁸ CITSEE is therefore situated within the broad field of socio-legal studies, although its wider concerns are less for the social context in which law operates, than for its political and indeed, in this case, geo-political context. Moreover, such an approach is essential to bring out the essential contestedness of citizenship, which may be a formal legal/institutional concept in one respect, but which is equally a multivalent and controversial concept, simultaneously displaying both inclusionary and exclusionary elements. This is *a fortiori* an important element to build into work on citizenship in the former Yugoslavia where there are close links between citizenship and polity-building in the context of new states.

Arguments about the relationship between law and politics as sociological phenomena are complex and long-running, not least in the cross-disciplinary fields of international studies, European Union studies and constitutional studies, all of which feed into this research project.²⁹ In CITSEE, law and legal materials are not treated as dry technical sources (and indeed legal scholars are not characterised as mere technicians), but rather they are seen as dynamic fields of enquiry where there are distinct tensions between the relative autonomy claims of legal and political questions.³⁰ Law is recognised in this context as both a reactive and a proactive element, structuring certain aspects of institutional change, but susceptible in turn to change as a result of political pressures.

It is a moot question whether legal scholars asking questions about law, legal institutions, legal actors and the contexts in which they operate are undertaking truly interdisciplinary work, or whether this work merely counts as transdisciplinary encounters. That is, work within one discipline which makes active and constructive use of the insights of other disciplines. Indeed for some, interdisciplinarity is in fact next to impossible,³¹ or at the very least faces many pitfalls and obstacles as regards the design and execution of research projects.³² This is one of the reasons why, as Vick observes, 'most interdisciplinary work [in law] has tended towards the

²⁸ This is evidenced by the wealth of material, especially the more recent material, surveyed in P. Cane and M. Tushnet (eds.), *The Oxford Handbook of Legal Studies*, Oxford, Oxford University Press, 2003.

²⁹ E.g. G de Búrca, 'Rethinking Law in Neofunctionalist Theory', (2005) 12 *Journal of European Public Policy* 310-36; N. Walker, 'Taking Constitutionalism Beyond the State', *RECON Online Working Paper* 2007/05; S. Hall, 'Researching International Law', in M. McConville and W. Hong Chui, *Research Methods for Law*, Edinburgh, Edinburgh University Press, 2007.

³⁰ B. Bix, 'Law as an Autonomous Discipline', in Tushnet and Cane, above n.28.

³¹ S. Fish, 'Being interdisciplinary is so very hard to do', in S. Fish (ed.), *There's No Such Thing as Free Speech, and It's a Good Thing, Too*, New York, Oxford University Press, 2004, 231-42.

³² D. Vick, 'Interdisciplinarity and the Discipline of Law', (2004) 31 *Journal of Law and Society* 163-193.

theoretical rather than the empirical'.³³ It is also because of the inherent difficulties of undertaking relatively large scale studies of the type to be undertaken under the aegis of CITSEE, using a team of researchers. There are considerable challenges involved in the task of ensuring the effective comparability of separate national and thematic case studies undertaken using inductive and qualitative methods of data collection and analysis, which may be why multivariate analysis has become a popular methodology in the field of comparative constitutional law.³⁴ Moreover, it can also be observed that the bulk of empirical work in the area of legal scholarship (as indeed is the case with much legal scholarship in general) is essentially national in its orientation.³⁵ CITSEE offers important innovations in this field, blending comparison across national boundaries (i.e. horizontally) with work which looks across the 'levels' of the constitutional settlement, incorporating international, European and national legal sources (i.e. vertically), using an inductive and hermeneutic method focused on detailed readings of texts and identification of patterns of legal and institutional change, and the political context in which this occurs, and the rebuilding and revising of theory on the basis of a grounded theory approach.

Ultimately, therefore, many of the questions which inform the intellectual approach adopted in CITSEE are both open and contested. CITSEE therefore demands a reflexive methodology which is apt to support the type of empirical project envisaged, and to that end the approach of constitutional ethnography has been adopted. This is a term coined by Kimberley Scheppele to describe work which involves the 'study of the central legal elements of polities using methods that are capable of recovering the lived detail of the politico-legal landscape',³⁶ with the goal of pursuing not prediction, in the social scientific sense, but comprehension: 'not explained variation, but *thematization*'.³⁷ It allows constitutionalism, as a result, to emerge 'as a set of practices in which the transnational ambitions of legal globalization flow over and modify the lived experience of specific local sites, and as a set of practices in which local sites inescapably alter what can be seen as general meanings.'³⁸ In sum, 'constitutional ethnography does not ask about the big correlations between the specifics of constitutional design and the effectiveness of specific institutions but instead looks to the logics of particular contexts as a way of

³³ See Vick, above n.32 at 189; see however the contributions to R. Banakar and M. Travers (eds), *Theory and method in socio-legal research*, Oxford, Hart Publishing, 2005 and to McConville and Hong Chui, above n.29.

³⁴ R. Hirschl, 'The question of case selection in comparative constitutional law', (2005) 53 *American Journal of Comparative Law* 125-155.

³⁵ H. Genn, M. Partington and S. Wheeler, *Law in the Real World: Improving our Understanding of How Law Works, Final Report and Recommendations*, Nuffield Enquiry into Empirical Legal Studies, 2006, available at <http://www.ucl.ac.uk/laws/inquiry>.

³⁶ K. Scheppele, 'Constitutional Ethnography: An Introduction', (2004) 38 *Law and Society Review* 389-406 at 395.

³⁷ Scheppele above n.36, at 391.

³⁸ Scheppele, above n.37 at 394.

illuminating complex interrelationships among political, legal, historical, social, economic, and cultural elements.³⁹ Constitutional ethnographies are not purely 'ethnographic' in the sense in which the term is used in the disciplines of anthropology and sociology, since typically the methods of data collection and analysis used focus on textual interpretations, not observations of human social behaviour in a fieldwork context. On the contrary, the project will make use of many of the standard qualitative tools of legal analysis such as close textual interpretation, coupled with other methods drawn from political science such as elite interviews. In that sense, the term 'ethnography' is used metaphorically rather than literally, and refers to the objective and context of comparison.

In one important respect, CITSEE is innovative as compared to the current state of the art. Most works of constitutional ethnography, hitherto, have been undertaken by sole researchers,⁴⁰ not least because of the difficulties of using inductive methods of analysis and theory-building for the purpose of executing a relatively large-scale comparative and contextualised study of this nature using an international and multi-disciplinary team. This issue will be dealt with in more detail in the section below on methodology, which will also explain how constitutional ethnography can be applied to define and justify the sample reviewed, to ensure that data collection is valid, to identify appropriate methods of analysis, and to underpin the interpretations which are derived from the data.

4. Hypothesis and context of the research

The principal hypothesis underpinning the research is that changes in the quality or nature of citizenship, which is defined in a specific politico-legal sense in the project, are best revealed by studying two sets of interrelated developments:

- the diffuse, gradual and incremental changes in the formal arrangements which govern various forms of citizenship; these are examined both comparatively across different (national) legal systems and vertically with a particular eye to seeing how the international, transnational and supranational levels are supplementing or interacting with the national level (i.e. the legal and institutional framework); and
- the contestations, conflicts and debates about definitions of, and rights and obligations of, polity membership, which occur whenever the contested concept of citizenship is invoked (i.e. the political context in which law changes).

It is argued that these effects and interactions are not accidental and they do not occur in an unstructured way. The objective of CITSEE is to identify and map these patterns, as part of a wider process of 'Europeanisation' evolving in Southeast

³⁹ Scheppele, above n.37 at 390.

⁴⁰ See the contributions to the special issue of *Law and Society Review* edited by Scheppele: (2004) 38 *Law and Society Review*, issue no. 3.

Europe/Western Balkans. This is a complex, constantly changing and politically contested process.

This point can be illustrated, in a preliminary way, by some observations about the context in which citizenship regimes operate in the new Balkan states at the present time, in particular the 'European' context. It is clear that the last decade of the twentieth century was a period during which definitions of nationality and citizenship were used by the successor states of SFRY in order to highlight differences as well as commonalities within and across the states. They became central tools of state-building and what Štiks has called 'ethnic engineering', in the context of a revival or rebirth of ethno-politics.⁴¹ Against that background, and in the context of ethnic and political cleavages marking deeply divided societies, which have suffered in several cases inter-ethnic violence and wars, the European Union has acted a reference point offering the possibility for those states to 're-integrate' with each other for the future within a broader 'union' or 'community'. This re-integration within the EU would also 'recover' important social, economic and even political rights the former Yugoslav citizens shared before the break-up of the SFRY, and could therefore also advance the reconciliation process among the states in question. It has thus come to play a central role in recent developments in South Eastern Europe and the Western Balkans in particular, influencing the evolving relationships between the post-Yugoslav states themselves (e.g. pushing the agenda of 'good neighbourly relations'), and insisting on a focus on enlargement and pre-accession adjustment. In that context, new political relationships have been developed, which affect the construction of concepts of citizenship, identity and belonging in both legal and political terms, not only on a 'vertical' axis as between the EU (and its Member States) and the new or putative Member States, but also on a 'horizontal' axis linking the successor states amongst themselves and, after accession to the EU, linking the new Member States and other EU Member States (not least the regional neighbours Bulgaria and Romania which joined the EU on 1 January 2007). Bearing in mind the complexities of the EU internal and external policies involved (addressing issues as varied as market integration, distributional and solidarity questions, security and welfare), as well as the national constitutional and legal frameworks implicated, these relationships form a complex and variegated patchwork in the context of which many dimensions of 'citizenship' in its broadest sense is affected.

The research context is thus provided by the various legal and political tiers of obligation and entitlement *vis-à-vis* the EU and its Member States of the SFRY successor states (see Annex 1 below). These obligations and entitlements range from full membership of the Union to putative candidate status, and in the case of six of these states (plus Albania which is included within the EU's Western Balkans

⁴¹ Štiks, above n.9.

strategy) have involved, or will in the future involve, the conclusion of a Stabilisation and Association Agreement (SAA) leading to full incorporation of the EU's *acquis* by the partner states into their legal orders. The relationships also impact upon their relations *inter se*, on a horizontal basis. All of the SFRY states (except Kosovo), along with regional partners, other states outside the region, and a number of international organisations and NGOs, have been members of the Stability Pact for South Eastern Europe formed after the Kosovo war, which is premised upon the maintenance and development of good neighbourly relations between the various states. In 2008, that organisation was superseded by a Regional Cooperation Council, organised by the states in the region themselves, but again with a wider membership of other organisations and states.⁴²

Even for Slovenia, the most 'advanced' of the SFRY states in terms of its 'integration' into the EU and 'Western' European institutions (as a member of NATO as well as the EU), the situation is still fluid, uncertain and evolving. Having joined the Eurozone in January 2007, it joined the Schengen zone in December 2007 (land borders) and March 2008 (air borders), with the result that the Schengen outer border now falls within the territory of a former federal state which is now dissolved. While Slovenia's citizens are formally EU citizens, their rights to labour market participation in many of the 'old' Member States have been limited after accession in 2004 for a transitional period. Uncertainty is even greater for the other states. Accession negotiations began with Croatia in late 2005, but its prospects for membership have been affected by its difficulties with the International Criminal Tribunal on the Former Yugoslavia, and by the fact that its accession negotiations began at the same time as those of Turkey. Recently it has pushed successfully for its accession process to be treated separately, and in March 2008 it was offered the prospect of accession by 2010, with conclusion of negotiations likely in 2009. In practice, bilateral difficulties with Slovenia have delayed this timetable with accession now more likely in 2011 or 2012. The Former Yugoslav Republic of Macedonia (hereinafter 'Macedonia') has been accepted as a candidate country, but formal accession negotiations have yet to begin, although a decision on this may be taken in mid-2010.

Croatian nationals were never subject to a visa requirement in relation to the majority of EU Member States, although visa requirements imposed by the UK and Ireland were abolished in 2006. A special regime is applicable in relation to local border traffic between Croatia, Italy and Slovenia, and between Croatia and Hungary, in order to protect historic arrangements whereby citizens of these states could cross each other's borders on the basis of an identity card alone, and without the need for a

⁴² Kosovan participation in the Regional Cooperation Council continues to be assured on its behalf even post independence by UNMIK in accordance with United Nations Security Council Resolution 1244.

passport. These arrangements have been preserved despite the enlargement of the Schengen zone, thus deviating from the default position whereby an individual crossing the outer Schengen border must produce a passport. Nationals of all the other SFRY successor states (Macedonia, Serbia, Montenegro, Bosnia-Herzegovina (hereinafter 'Bosnia') and Kosovo) were subjected since the dissolution of Yugoslavia to a visa requirement when travelling into the Schengen zone or into the UK and Ireland. Steps to ease the stringency of the regime (so-called visa facilitation, which involves maintaining lower visa fees and removing the requirement from certain categories of travellers such as students) have to be traded against readmission agreements, whereby the states agree to take back their nationals who are residing without authorisation in the Member States. The further step of visa liberalization, at least vis-à-vis the Schengen states was instituted at least for Macedonia, Montenegro and Serbia as of 19 December 2009.⁴³ This leaves Bosnia and Kosovo (as well as Albania which is linked to the former Yugoslav states through the EU's Western Balkans strategy) aside, although Bosnia and Albania have been offered the prospect of visa liberalization by mid-2010 if certain conditions are met. Kosovo is in a special position because a minority of Member States have not recognised its independence thus far, and so logically would not recognise its nationals as requiring visas as such. In fact, Kosovo has now been formally included in the list of territories for which visas are required. Kosovan passport holders are unable to travel to these states (Cyprus, Greece, Romania, Slovakia and Spain), and indeed cannot go to a number of states within the former Yugoslavia where it is not recognised, specifically Serbia and Bosnia-Herzegovina.

These legal statuses are still evolving rapidly, as witness the visa liberalisation anticipated for 2010, the declaration of independence of Kosovo in February 2008, the protracted recognition process that this has triggered, the ongoing status of accession negotiations for Croatia, the process of negotiating, concluding and bringing into force SAA Agreements, and the transition over 2007-2008 from the 'externally sponsored' Stability Pact triggered by the Kosovo crisis in 1999 to the 'regionally owned' South Eastern European Regional Cooperation Council via the more informal Southeast European Cooperation Process. It cannot be anticipated that the pace of change will slacken during the period when these questions are under scrutiny through the CITSEE project (2009-2014).

Aside from Croatia and Macedonia, which are recognised as candidate states (albeit the latter's accession negotiations have been blocked by Greece over the name dispute), all the other former SFRY Republics and Albania are recognised as potential

⁴³ Council Regulation 1244/2009 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ 2009 L336/1, based on a Commission proposal of 15 July 2009: CON(2009) 366. The UK seems likely to remove the visa requirement one year later than the Schengen zone states.

candidate countries and are linked under the umbrella of the SAA process, which contributes to political and economic development in ways which also recognise their ethnic and religious diversity. Thus far, Montenegro, Albania and – most recently in December 2009 – Serbia have formally applied for membership, but are not recognised as candidate states as yet. Relations with the EU are based on European Partnerships, which – in the case of Croatia – has been converted into an Accession Partnership. A central legal milestone towards accession is the signature and entry into force of a Stabilisation and Association Agreement, incorporating many of the free trade and approximation of laws provisions contained in the so-called Europe Agreements signed with the states of Central and Eastern Europe which joined the EU in the fifth enlargement in 2004 and the sixth enlargement in 2007. Accession requires not only formal alignment of national laws to the requirements of EU law, but it also has a political element, as the European Commission seeks to apply the so-called Copenhagen Criteria in relation to fundamental rights and even minority rights, but specifically tailored to the requirements of the Western Balkans. On the other hand, the other SFRY successor states can highlight dissatisfaction with the alleged hypocrisy of the EU and its Member States and with the notion of conditionality more generally, as Slovenia was admitted to membership, notwithstanding its well-publicised difficulties with the so-called ‘Erased’. These are former Yugoslav citizens who were citizens of other Republics prior to 1990, who – for a variety of reasons – failed to access Slovenian citizenship within a prescribed period in 1991/2, and who found themselves removed from all official registers and not given permanent non-national resident status.⁴⁴ In any event, for all of the SFRY successor states – apart from Croatia – accession remains a rather distant goal, albeit one which is kept in view because of the centrality of enlargement policy for the EU itself, as its most successful external policy.

However, this overview gives a rather static and one-dimensional perspective on the relationship between the SFRY successor states and the EU, since it does not track also important variations in political and popular attitudes towards the EU and putative EU membership in the SFRY successor states, and the contestedness of the issue of ‘Europe’ generally, and the EU more specifically. Nor does it engage with the contestedness of the issue of enlargement within the EU and its Member States with its current focus on the notion of *absorption capacity* or indeed the capacity of the post-Yugoslav states themselves to overcome bilateral conflicts which currently hinder the development of good neighbourly relations (e.g. between Slovenia and Croatia in the

⁴⁴ B. Blitz, ‘Statelessness and the Social (De)Construction of Citizenship: Political Restructuring and Ethnic Discrimination in Slovenia’, (2006) 5 *Journal of Human Rights* 453-379; J. Zorn, ‘Ethnic Citizenship in the Slovenian State’, (2005) 9 *Citizenship Studies* 135-152; S. Andreev, ‘Making Slovenian Citizens: The Problem of the Former Yugoslav Citizens and Asylum Seekers Living in Slovenia’, (2003) 4 *Southeast European Politics* 1-24; J. Dedić, V. Jalušič, J. Zorn (eds.), *The Erased: Organized Innocence and the Politics of Exclusion*, Ljubljana, Mirovni Inštitut.

context of the latter's accession negotiations). Finally, it will inevitably result in a somewhat ahistorical approach being adopted, unless the deeper historical legacy of many of the conflicts in the Western Balkans is taken into account in the analysis. The post-conflict character of many political contestations in the Western Balkans, and the nature of the mechanisms which have been developed to address this, require close assessment in the context of the unique characteristics of processes of Europeanisation in the Balkans.⁴⁵ While the focus in this project is upon legal and institutional change, push and pull factors in relation to EU membership and the somewhat liminal position of the Western Balkans, encircled by the EU since January 2007 and caught between enlargement policy and the European Neighbourhood Policy, are taken into account as important contextualising factors.

5. Research Questions

On the basis of these hypotheses and background, CITSEE is addressing the following key research questions:

1. What are the current citizenship regimes (as defined) for the seven successor states of the SFRY, and in what ways have these evolved since the process of disintegration began in 1990?
2. To what extent has the pre-1990 SFRY regime of federal/republican citizenship influenced the process of transition through the initial determination of the citizenry in each of the seven states, and the current citizenship regimes now in place?
3. Specifically, what is the position under the various national laws in relation to five key issues:
 - a. the status of residents of the former SFRY Republics resident in other Republics at the moment of independence (i.e. a specific historical issue which is peculiar to the former SFRY successor states and results from the complexities of the interplay between former federal and republican citizenships);
 - b. the complex and multi-level nature of citizenship as a result of the longer term legacy of former federal and republican citizenships, including dual and plural nationality issues, policies on diasporas and so-called kin-state issues;
 - c. citizenship, politics and civil society, including political rights (the granting or denial of political rights for non-national residents and non-resident nationals), the status and role of political parties, including those which are 'ethnic', 'national' and 'trans-national', and the role of other social movements such as unions and NGOs;

⁴⁵ C. Gordon, 'The Stabilization and Association Process in the Western Balkans: An Effective Instrument of Post-conflict Management?', (2009) 8 *Ethnopolitics* 325-340; D. Kostovicova and Vesna Bojičić-Dželilović, 'Europeanizing the Balkans: Rethinking the Post-communist and Post-conflict Transition', (2006) 5 *Ethnopolitics* 223-241.

- d. minority rights and personal status issues, including a focus in particular on the status and rights of minorities such as the Roma, and on the interplay between citizenship questions and issues of gender and sexuality, as well as the impact of citizenship laws on trans-national families in a post-conflict situation;
 - e. citizenship and mobility, with a focus on visa liberalisation, the role of EU citizenship and the historical legacy of shifting borders on free movement and travel across borders (both within the former SFRY and across its outer borders)?
4. Can the trends in the national laws be usefully evaluated using measures of the openness/restrictiveness of citizenship policies developed in the emerging field of comparative citizenship studies?
 5. What are the key elements of current EU and Member State policies towards the Western Balkans and the SFRY successor states, and how have these evolved since 1990?
 6. To what extent and in what ways have the citizenship regimes in and across the successor states of SFRY evolved as a result of these EU policies towards the region, and in particular how have the reactions of the states differed as a result of the impact of EU policies? What other international legal norms impact upon these evolving citizenship regimes, and what is the relationship between the impact of these legal norms and the EU legal order? What is the relevance of transnational relationships, such as those with EU Member States (e.g. Bulgaria/Macedonia) and with third states (e.g. Albania/Kosovo/Macedonia).
 7. Is there any evidence of the citizenship regimes converging towards either (a) a regional norm or (b) some form of 'European' norm, or is divergence the norm?
 8. Has the evolution of national citizenship regimes been affected by the multivalent legal relationships existing between the EU and those states which are assigned to different tiers of entitlement and obligation *vis-à-vis* the EU and *vis-à-vis* each other, and if so to what extent and how?
 9. Turning this question around, how do the varying citizenship regimes of the SFRY successor states, and in particular those citizenship practices which cut across national boundaries whether on a vertical or a horizontal axis (such as those policies giving effect to EU citizenship entitlements and transnational citizenship practices such as the voting of non-nationals or patterns of dual nationality), impact upon the evolving legal relationships encompassing the successor states of the SFRY and the EU?
 10. What conclusions can be drawn from this analysis about the 'condition' of citizenship in the Western Balkans, taking into account the European and international context, and more generally for the 'condition' of citizenship in the wider Europe?

6. Summary of expected key developments *vis-à-vis* the state of the art

CITSEE can be expected to offer developments *vis-à-vis* the state of the art in the following six areas:

- a) CITSEE is methodologically innovative applying the approach of constitutional ethnography to a large-scale comparative project undertaken by an international multi-disciplinary team. While the project undoubtedly faces a number of risks, it is hoped that, for the future, it can provide a baseline and set of reference points for designing similarly complex transnational projects looking at legal and institutional change in its broader social and political context.
- b) While CITSEE is located within a relatively well-established tradition of critical and contextual approaches to the study of EU law,⁴⁶ it also extends well beyond the boundaries of EU law alone. The project also requires the comparative study of national constitutional laws, as well as the study of international legal norms relevant to citizenship regimes. Inevitably, such a wide-ranging study suggests taking a fresh look at ideas of integration in the context of developments in the Western Balkans which are outside the current boundaries of the EU, but which might in future be the subject of enlargement processes. The contested concept of 'integration', and in particular the question whether EU law is somehow inherently 'integrative', has been a central reference point in relation to *internal* studies of EU law and politics, with legal and political scholars typically disagreeing about such questions; it is an important innovation to apply this concept at the margins of the EU, in the context of enlargement and potential enlargement, and to combine within the study not only the sources of EU law itself, but also complementary national and international sources underpinning citizenship regimes.
- c) CITSEE adds an important empirical dimension to studies of 'European' citizenship by considering the external and enlargement dimensions, as well as addressing some of the issues raised by the challenge of minorities and minority nationalism in that context.⁴⁷ Recalling that 'European' citizenship is

⁴⁶ For surveys of the 'ideas bank' of EU legal studies see J. Shaw, 'The European Union', in P. Cane and M. Tushnet (eds.), *The Oxford Handbook of Legal Studies*, Oxford, Oxford University Press, 2003, 325-352; N. Walker, 'Legal Theory and the European Union: A 25th Anniversary Essay', (2005) 25 *Oxford Journal of Legal Studies* 581-601; A. von Bogdandy, 'A Bird's Eye View on the Science of European Law. Structures, Debates and Development Prospects of Basic Research on the Law of the European Union in a German Perspective', (2000) 3 *European Law Journal* 208-238; B. de Witte, 'European Union Law: A Unified Academic Discipline?', *EUI Working Papers*, RSCAS 2008/34.

⁴⁷ For a geographically related enquiry into the effects of Europeanisation on citizenship, see D. Anagnostou, 'Deepening Democracy or Defending the Nation? The Europeanisation of Minority Rights and Greek Citizenship', (2005) 28 *West European Politics* 335-357.

a composite notion, combining the EU citizenship of the EC and EU Treaties with national and subnational citizenship statuses and rights, the project will go beyond the conventional confines of studies of citizenship in Europe, which have historically focused on two sites of contestation particular, namely the role of national citizenship in defining the scope of citizenship of the European Union (Article 17 EC Treaty) and the development of Union citizenship in terms of the articulation of rights within the EU legal order alone, adjudicated upon by the European Court of Justice.⁴⁸ In this context, it builds on an earlier study undertaken by Shaw,⁴⁹ which focused specifically on the political rights given to non-nationals under EU and national law; however, what is proposed is a more ambitious study in terms its geographical and geopolitical scope and the different elements of comparison and interpretation of the data collected which will be built into the analysis undertaken.

- d) Building on the well established literatures in the field of Europeanisation,⁵⁰ and in particular Europeanisation, enlargement and ‘neighbourhood’,⁵¹ CITSEE will add substantial empirical evidence from the field of citizenship. However, it will also work with a multi-textured concept of Europeanisation, which focuses on the mutually constitutive processes which occur between international, supranational, national and – sometimes – subnational legal norms and institutions, rather than concentrating on a rather one-dimensional concept of Europeanisation which simply assesses how membership of the EU, or the prospect thereof, changes national institutions and political processes. Europeanisation is understood as more than either the singular process of ‘joining Europe’ in the sense of accession to the EU or even the more gradual and incremental process of institutional adaptation in the face of the requirements of the EU’s *acquis* in the context of the requirements of the Stabilisation and Association Process. More generally, Europeanisation can be understood to encompass the multiple processes of transfer and exchange which go on between institutions at the international, European, national, subnational and local level which help us to understand both continuity and change in institutional form, and also the political meanings which are attached to these institutions at different points in space and time. In that

⁴⁸ For an example, see the contributions to the ‘Special Issue on EU Citizenship’, edited by Samantha Besson, (2007) 13 *European Law Journal* issue 5.

⁴⁹ Shaw, above n.20.

⁵⁰ E.g. from Ladrech onwards: R. Ladrech, ‘Europeanisation of Domestic Politics and Institutions: The Case of France’ (1994) *Journal of Common Market Studies* 69.

⁵¹ E.g. U. Sedelmeier, ‘Europeanization in new member and candidate states’, (2006) 1 *Living Reviews in European Governance*, no. 3 (<http://www.livingreviews.org/lreg-2006-3>); F. Schimmelfennig, ‘Europeanization beyond Europe’, (2009) 4 *Living Reviews in European Governance*, no. 3 (<http://www.livingreviews.org/lreg-2009-3>); E. Harris, ‘Europeanization of Slovakia’, (2004) 2 *Comparative European Politics* 185-211.

sense, the project will attempt to blend the (traditional) EU-focused concept of Europeanisation with the concept of 'democratic iterations' developed by Seyla Benhabib, in the context of her reflections within traditions of cosmopolitan political theory as much upon ideational as upon institutional change.⁵²

- e) CITSEE contributes to, and develops, not only the well-established literature on citizenship in general, but specifically the emerging literature comparing citizenship regimes on a transnational basis.⁵³ In particular, it supplements the existing body of work with a study of the variety of regimes that have emerged as a result of the break-up of a single state, placing the legal materials under scrutiny in their wider political context. Building on the work of Dumbrava and Bauböck *et al*,⁵⁴ it contributes to the process of developing an appropriate academic approach to studying citizenship regimes in the context of political and economic transition, where (western) European and North American approaches had hitherto focused on the evolution of citizenship regimes largely in the context of issues of immigration and integration. So far the debate about migration and integration in the SFRY successor states, and indeed more widely in Central and Eastern Europe is in its infancy,⁵⁵ since the region is composed mostly of the countries of emigration. In any event it is not clear that this is the most useful framework within which to assess changes in the state of the relevant citizenship regimes, given the complexities of the forced migrations which resulted from the conflict both within the former Yugoslavia, and also towards the West. It challenges over-simplistic binary conceptions such as 'liberal' and 'illiberal' as the basis for analysing both the current state of laws on citizenship and nationality acquisition and loss, and also ongoing trends as laws are amended. As such it complements more generally the work of political theorists such as Will Kymlicka and Rogers Brubaker, questioning the applicability of concepts such as liberal nationalism

⁵² S. Benhabib, *The Rights of Others*, Cambridge, Cambridge University Press, 2004.

⁵³ E.g. R. Bauböck *et al* (eds.), *Acquisition and Loss of Nationality. Volume 1: Comparative Analyses*, Amsterdam University Press, Amsterdam, 2006; M. Vink, 'Patterns of Citizenship', University of Maastricht, ms, 2005; M. Howard, 'Comparative Citizenship: An Agenda for Cross-National Research', (2006) 4 *Perspective on Politics* 443-455; Howard, *Politics of Citizenship*, above n.13; C. Dumbrava, 'Citizenship Regulations in Eastern Europe. Acquisition of Citizenship at birth and through regular naturalization in sixteen postcommunist countries', (2007) *CEU Political Science Journal* 450-472; C. Joppke, 'Comparative Citizenship: A restrictive turn in Europe', available at <http://www.rg-law.ac.il/workshops/2007/articles/joppke.pdf>.

⁵⁴ Dumbrava, above n.53; R. Bauböck *et al* (eds.), *Citizenship Policies in the New Europe*, Amsterdam University Press, Amsterdam, 2007.

⁵⁵ M. Pajnik, 'Integration Policies in Migration between Nationalising States and Transnational Citizenship, with reference to the Slovenian case', (2007) 33 *Journal of Ethnic and Migration Studies* 849-865; S. Andreev, 'Active Civic Participation of Immigrants in Slovenia', Country Report prepared for the European research project POLITIS, Oldenburg, 2005, www.uni-oldenburg.de/politis-europe/.

and multiculturalism in the context of the new 'wider' Europe,⁵⁶ and questioning the appropriate vocabulary of 'nationalism' and 'citizenship' to be applied in Southeast Europe.⁵⁷

- f) Finally, CITSEE can contribute to both theory-building and policy-related work in relation to one dimension of post-conflict resolution and transition studies, namely the evolution of regimes of polity membership, where the distinctions between the emerging national regimes resulting from disintegration, are tempered by the imperatives of re-integration, in the context of the stabilisation and accession process and, in the future, accession to the European Union as a Member State.⁵⁸

7. Details of the methodology and methods to be adopted

The central methodological challenge of CITSEE is to deliver successfully the application of the inductive approach of constitutional ethnography on a larger scale than has hitherto been common, using an international team of researchers with multi-disciplinary academic backgrounds (e.g. law, history, philosophy, geography, political science, international relations). The general objective is to ensure that documentary data and empirical evidence is collected and analysed in a manner which is appropriate to answering the research questions which have been identified, and which guarantees that comparative thematic analysis can be undertaken which is sensitive to the dynamic and rapidly changing nature of the material being studied. In addition, the study has to be designed such as to make it possible to bring to bear upon the empirical stage of data collection and analysis the complex theoretical and political background sketched here, and that the project makes full use of key insights drawn from the existing state of the art in relation to the conceptual frameworks provided, in particular, by citizenship and Europeanisation as noted in the previous sections.

The following are the key elements of the project methodology:

- **A comprehensive literature review**

This involves the preparation of an analytical synthesis of the available literatures on the national citizenship regimes under study (including historical materials and

⁵⁶ E.g. W. Kymlicka, 'Liberal Nationalism and Cosmopolitan Justice', in R. Post (ed.), *Another Cosmopolitanism*, Oxford, Oxford University Press, 2006; for a critique see C. Bell, 'Liberal Multiculturalism' and the Limits of International Law', (2007) 6 *Ethno-Politics* 599-602.

⁵⁷ Z. Csergo and J. Goldgeier, 'The European Union, the post-communist world, and the shaping of national agendas', Paper prepared for the European Union Studies Association 9th Biennial Conference, 2005, Austin, Texas.

⁵⁸ T. Diez, S. Stetter and M. Albert, 'The European Union and Border Conflicts: The Transformative Power of Integration', (2006) 60 *International Organization* 563-593.

materials relating to the ethnic conflicts and political developments in the SFRY successor states since 1990), and the relevant European and international legal systems and norms, as well as of the key theoretical literatures on citizenship (especially citizenship beyond the state), polity-building under non-state conditions as in the context of the EU, and the many dimensions of and approaches to Europeanisation. This is an essential step to inform the process of data collection.

- **Definition and justification of the sample chosen:**

CITSEE focuses on the disintegration of a single state over a period just less than twenty years, highlighting developments in and across the successor states. The question inevitably arises whether the sample needs to be expanded to include also other cases where states have broken up and then (at least in part) reintegrated, such as Czechoslovakia and the Soviet Union. Bearing in mind the approach of constitutional ethnography adopted, with its focus on patterns of change and the textures of institutions rather than upon prediction and scientific analysis of variables, the case can be made that studying the cases which have emerged *across* the SFRY through an internal comparison is sufficient to represent a valid sample, without the need to invoke *external* comparators. However, this will not preclude widening the context as CITSEE is gradually developed towards maturity, towards a more general concern with the evolution of multinational federations as a reference point for changes within and across the former Yugoslavia.

- **Use of country case studies and case studies of cross-cutting themes:**

The same research questions will be asked in relation to each of the new Balkan states, thus applying a consistent set of measures in order to test out questions related to Europeanisation. Country case studies are supplemented by detailed attention on a thematic basis to certain key aspects of citizenship rights and status as defined in the project, which are apt to illuminate 'complex interrelationships amongst political, legal, historical, social, economic, and cultural elements.'⁵⁹ The thematic cases studies will focus in particular upon five key issues:

- the status of residents of the former SFRY Republics resident in other Republics at the moment of independence;
- the complex and multilevel nature of citizenship in the former SFRY, including issues of dual and plural nationality, as well as diaspora and kin-state policies;
- the interface between citizenship, political rights and political participation including the role of political parties in the context of ethnic approaches to democracy;
- the status of minority groups, such as the Roma, as well as personal status issues around gender, sexuality and trans-national families;

⁵⁹

See n.39 above.

- the impact of citizenship concepts on free movement and travel across borders, with a particular focus on issues of visa liberalisation.

This list may be reviewed in the light of early experience with the case studies.

- **Assuring comparable and valid data collection across the case studies**

After the completion of the literature review, the second phase of CITSEE will involve the preparation of appropriate research instruments by the research team collectively to assure the quality of data collection in the areas outlined above. This will include a protocol of documentary sources to be collected and analysed, including the national laws and policies of the seven states which are the primary focus points, any other national laws which impact upon the condition of citizenship in and across the SFRY successor states, EU laws and policies, the laws and policies of other regional international organisations, and international law more generally. A list of preferred primary sources will be drawn up, including treaties, constitutions, legislation and preparatory documents, governmental policy statements and interpretations, policy propositions and arguments put forward by other non-governmental actors including political parties, and case law, coupled with assessment criteria to assure the quality of secondary interpretative material collected and used. For the country materials, a baseline of Yugoslav Federal and Republican citizenship before 1990 will be applied, and changes since that time analysed. Documentary data collection will be backed up by interviews of elite informants, especially in governments, international organisations, and key stakeholders such as activist NGOs and political parties, used in particular to elaborate the documentary sources, and to clarify points of conflict or ambiguity.

- **Qualitative case study and comparative analysis**

The team is also using research instruments in order to facilitate appropriate qualitative analysis of the material.⁶⁰ This involves, in the first instance, close textual analysis of documents and the team is using a broad grounded theory approach, whereby the researcher constantly reviews and revises the categories into which the data collected can be fitted. The general intention is gradually to develop thematic categorizations, which are distanced from the immediate data, which could be capable of sustaining more generalized conclusions from the research. This will be applied in particular to the thematic case studies outlined in earlier sections. Secondly, the analysis will involve the development cross-country comparisons for all seven states, applying and adapting methodologies for qualitative comparative citizenship studies as developed by Bauböck *et al*, Vink, Howard, and Dumbrava,⁶¹ which are intended to pick out trends and themes in relation to the acquisition and loss of nationality, and in relation to the rights associated with national citizenship.

⁶⁰ I. Dobinson and F. Johns, 'Qualitative Legal Research', in McConville and Hong Chui, above n.29.

⁶¹ See above nn.53 and 54.

8. A note on terminology

'Yugoslavia' is not a simple term, either when it comes to designating a particular manifestation of state power on a specific territory or indeed the broader political and geo-political ideas (pan-south-slav-ism or Yugoslavism) which are associated with that state power. To that extent, it is worth noting that in the first Yugoslavia (i.e. the Kingdom of Yugoslavia, in existence until 1941) nation was mostly understood ethnically, with Yugoslavia essentially seen as the (ethnic) state for South Slavs, with groups such as Magyars, Germans, Italians, Albanians and other non-Slavs as potential traitors to the state. Even so, citizenship itself was not restricted as the law adopted in 1928 granted citizenship based on municipal registration. The focus in CITSEE is on the states established on the territory of the state which, between 1945 and 1991, was known as Yugoslavia in common parlance. It was known first as 'FPRY' (Federal People's Republic of Yugoslavia) and later on (after 1963) as 'SFRY' (Socialist Federal Republic of Yugoslavia). In general, therefore references to 'Yugoslavia' are references to socialist Yugoslavia and not to the inter-war Kingdom of Yugoslavia (known during the first decade of its existence as the Kingdom of Serbs, Croats and Slovenes) or to the later Serbian-inspired manifestation of Yugoslavia (Federal Republic of Yugoslavia or 'rump Yugoslavia').

It is even less easy to find a single term which encompasses the seven states which are the primary focus of this project, which are here termed the 'successor states' of the SFRY, as the seven independent states which are physically established on the territory of the former Yugoslavia or SFRY after 1991.

The term 'successor states' invites closer enquiry, not least because it is both a term of art used in international law for purposes of state responsibility, etc. and also a more general term used within political discourse. Properly speaking, the initial successor states of the former SFRY were Slovenia, Croatia, Bosnia-Herzegovina, the Federal Republic of Yugoslavia (established in April 1992 from the former Yugoslav republics Serbia and Montenegro), and the Former Yugoslav Republic of Macedonia ('FYROM' or Macedonia). Montenegro became independent in 2006 declaring its separation from what was by then known as the State Union of Serbia and Montenegro (known between 1992 and 2003 as 'FR Yugoslavia'). This automatically entailed Serbia's independence as well. The successor state to Serbia-Montenegro is formally Serbia, rather than Montenegro, leaving Montenegro's status as a 'successor state' somewhat ambiguous. The position of Kosovo is even more complicated since it unilaterally declared independence from Serbia in 2008, and thus is not a successor state of either Serbia or – literally speaking – SFRY. It was, moreover, never a republic in the SFRY, but rather an autonomous province within the republic of Serbia, with republic-like powers and autonomy after the adoption of the last SFRY constitution in 1974 until the abolition of Kosovo's autonomy, against the will of its ethnic Albanian majority, in 1989.

An alternative term for these seven states, commonly used in the CITSEE project, is that of 'New Balkan States', these being the states formed on the ruins of socialist Yugoslavia after 1991 (thus six former Yugoslav republics (Slovenia, Croatia, Serbia, Montenegro, Bosnia-Herzegovina and Macedonia, and one autonomous region - Kosovo). They could be also called 'Post-Yugoslav states'. An alternative which avoids the contentious terms 'Balkan' and 'Yugoslav' would be 'new states of South East Europe.' The term 'Old Balkan States' would then refer to Albania, Greece, Romania, Bulgaria, and (at least its western territories) Turkey. However, given the contested histories of the Balkan peninsula, the use of the word 'new' to designate states such as Croatia, Serbia and Montenegro is also rather controversial.

Another commonly used term, but not one which will be extensively used in this project, is that of the 'Western Balkans'. This is a piece of EU artifice, and it is not directly useful in order to identify the scope of CITSEE, for it excludes Slovenia (as already a Member State) and includes also Albania. The term 'Western Balkans' is thus used only in the context of EU external policies as part of the process whereby those states, now encircled entirely by EU Member States since the accession of Bulgaria and Romania in 2007, are offered a 'European perspective' for the future and are regarded as candidate or potential candidate countries.⁶² Croatia will also, presumably, cease to be a Western Balkan state, in those terms, if/when it accedes to the EU. Albania is not included within the scope of CITSEE, although its close relations with Kosovo (which has an Albanian majority) and Macedonia (which has an Albanian minority) means that its laws, policies and practices on citizenship inevitably impact upon those states at a minimum, and indeed perhaps on others as well. Albanian citizenship law will therefore receive some attention in this project.

Finally, it is worth noting that South East Europe is an even wider term, and one which does not correspond with the Balkans, even in geographical parlance. Cyprus, for example, is part of South East Europe but not of the Balkans, on the assumption that the term Balkan countries is understood as including all countries that are situated fully or partially on the geographic Balkan peninsula. Slovenia, although largely but not totally outside the geographic Balkans, was in effect included within the Balkans as general framework whilst it was part of Yugoslavia which was understood as a Balkan state.

These terminological and territorial debates will be regularly revisited during the course of CITSEE, not in order to supply 'answers' to questions and challenges which are doubtless intractable, but in order to show what role these questions can play in relation to the evolution and application of laws and policies on citizenship and closely related questions.

⁶² See for example, European Commission Communication, *Western Balkans: Enhancing the European Perspective*, COM(2008) 127, 5 March 2008.

9. Conclusion and way forward

The main outputs from CITSEE will be a website, publications (monographs, edited volumes or collective works, journal articles and book chapters, including web-based Working Papers), conferences and other similar events.

While CITSEE's objectives are emphatically not normative in nature, and are not intended to supply answers as to 'best' or 'worst' practices in relation to citizenship regimes, or to evaluate the impact of Europeanisation as negative or positive, none the less such an evaluative study is likely to be of interest not only to researchers, but also to non-governmental organisations and to policy-makers in the region, in the EU institutions, and in other international institutions, because it fills in many gaps in our current knowledge and provides improved evidence on the basis of which policies may be developed in the future. This insight informs both the research process and, in particular, the dissemination strategy. Accordingly, the CITSEE website includes a country profile section (linked to our partner website of European Union Democracy Observatory on Citizenship) and a blog, and CITSEE will hold dissemination events in the region before its conclusion in 2014.

Annex 1: Status of new Balkan/SFRY successor states in relation to European Union

New Balkan state/SFRY successor state	EU membership	Schengen membership	Visa status for entry of citizens into EU states	EU candidate country	EU accession negotiations	European Partnership	SAA Agreement	Stability Pact (up to 28 February 2008)	Regional Cooperation Council (from 1 March 2008)
Slovenia	Since 2004	Since 2007/8	N/A	N/A	N/A	N/A	N/A	Y	Y
Croatia	2011/2?	N/A	None required for Schengen; visa liberalisation vis-à-vis UK/Ireland in 2006	Since 2004	Since 2005; likely to conclude in 2010	Until 2004	Signed 2001 /in force 2005	Y	Y
Former Yugoslav Republic of Macedonia (Macedonia)	N	N/A	Visa liberalisation for Schengen 19/12/09	Since 2005	Not started although Council may decide in 2010	Since 2006	Signed 2001 /in force 2004	Y	Y
Bosnia-Herzegovina (BiH)	N	N/A	Visa facilitation; visa liberalisation possible in 2010	N	N	Since 2006	Signed 2008	Y	Y
Serbia	N	N/A	Visa liberalisation for Schengen 19/12/09	Applied in 2009	Not recognised as candidate country	Since 2006	Signed 2008	Y	Y
Montenegro	N	N/A	Visa liberalisation for Schengen 19/12/09	Applied in 2008; Commission opinion 2010	Not recognised as candidate country	Since 2006	Signed 2007	Y	Y
Kosovo	N	N/A	Visas demanded for all states except Macedonia; Kosovan passport holders unable to enter states not recognising Kosovo including Bosnia and Serbia	N	N	Since 2006	Subject to stabilisation mechanism since 2003	N/A	Despite declaration of independence in Feb 2008, still represented by UNMIK

